

In re) Fair Hearing No. 15,360
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Appeal of)

The petitioner appeals the decision by the Department of Social Welfare terminating her ANFC benefits based upon her receipt of unemployment compensation.

The facts are not in dispute. The petitioner received ANFC as a Group 3 parent. Prior to December, 1997, the petitioner was working, and her ANFC benefits were calculated according to the program disregards and deductions that are allowed for earned income. In December, she was laid off from work and began receiving unemployment compensation benefits.¹ The Department notified the petitioner that her ANFC benefits would be terminated because of her increased income.

The petitioner does not dispute the amount of unemployment compensation the Department has determined she receives each month. The issue is whether the petitioner should be allowed the same deductions from her unemployment benefits that were allowed from her wages when she was

¹At about this same time the petitioner also began receiving regular child support payments, which also affected the amount of her ANFC. The petitioner indicated she had no dispute, however, with the Department's treatment of her child support income.

working. The petitioner argues that because unemployment benefits are based on prior employment and are taxable, they should be treated the same as earned income for purposes of ANFC.

ORDER

The decision of the Department is affirmed.

REASONS

Under the regulations adopted by the Department "[a]ll income except that specifically excluded shall be evaluated to establish net income available to meet need." W.A.M. 2250. The regulations further specifically describe "unemployment compensation" as "unearned income" (W.A.M. 2252A), which is treated as follows:

The full amount of available unearned income shall be applied to the payment standard, except for disregards specified under certain Federal programs, see Exempt Income.

W.A.M. 2252

Unemployment compensation is not contained in the list of excluded income found at W.A.M. 2255.1. Under the regulations, only income which is "earned" is subject to disregards which result in only partial counting of the income to the family from that source. W.A.M. 2254. Income can only be classified as "earned" if it comes from "wages, salary (cash or in kind), commissions or profit from activities in which the individual is engaged as an employee

or a self-employed person, including but not limited to active management of capital investments (e.g., rental property)." W.A.M. 2253.

Under the regulations, the unemployment compensation received by the petitioner was correctly designated as "unearned income" subject to a one hundred percent deduction from the ANFC payment standard. This (along with her child support) places the petitioner over income for ANFC eligibility. Inasmuch as the Department's decision is in accord with the pertinent regulations, the Board is bound by law to affirm it. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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